

**IN THE HIGH COURT OF PUN JAB AND HARYANA AT CHANDIGARH****131****RSA-1643-2025 (O&M)****Date of Decision : 19.05.2025**

Gopal Singh and Another

....Appellants

VERSUS

Nasib Singh and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jagraj Singh Khiva, Advocate for the appellants.

ALKA SARIN, J. (Oral)**CM-5661-C-2025**

For the reasons stated in the application, the same is allowed.

The delay of 182 days in filing the present appeal is condoned.

RSA-1643-2025 (O&M)

1. Present appeal has been filed by the plaintiff Nos.2 and 3 challenging the judgments and decrees dated 27.07.2018 passed by the Trial Court and 12.08.2024 passed by the First Appellate Court, respectively.
2. The brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for declaration to the effect that they are owners in joint possession to the extent of 6/25th share of land as fully described in the plaint situated in village Dosanjh, Tehsil Moga as well as for permanent injunction restraining defendant-respondent No.1 from forcibly, illegally and without due course of law alienating, encumbering, transferring etc. or changing the nature of the suit property. The suit was filed averring therein

that the property was originally owned by one Surmukh Singh. Surmukh Singh died and his estate was inherited by his Inder Singh. Inder Singh also died and the estate was, thereafter, inherited by Satnam Singh, Dharam Singh, Amar Singh, Narain Singh and Gurnam Singh in equal shares, hence the suit property is claimed to be ancestral, joint Hindu family and coparcenary property in the hands of the aforesaid persons. Satnam Singh son of Inder Singh son of Surmukh Singh was recorded as owner to the extent of 1/5th share in the total property, who was the real uncle of the plaintiffs, and he died issueless leaving behind his three brothers, namely, Amar Singh, Narain Singh, Gurnam Singh and two sisters, namely, Surjit Kaur and Ram Rakho. Dharam Singh and two sisters, namely, Sant Kaur and Jasvir Kaur pre-deceased Satnam Singh. It was further averred that Satnam Singh was of unsound mind and was not capable of executing any document nor he executed any document during his lifetime. It was further the case set up that Satnam Singh was looked after and served by the plaintiff-appellants and their father and he lived and resided with the plaintiff-appellants. The plaintiff-appellants claimed themselves to be in lawful, peaceful and continuous possession of 1/5th share that they had inherited from their father Amar Singh and 1/5th share of deceased Satnam Singh. It was further averred that defendant-respondent No.1 had got some false, forged and fabricated documents regarding the share of Satnam Singh. The plaintiffs requested defendant-respondent No.1 a number of times to admit their claim, however, because of his refusal, the necessity to file the present suit arose.

3. The suit was contested by defendant-respondent Nos.1 to 4 who filed their written statement raising various preliminary objections including that the suit was barred by the principles of *res judicata* as Amar Singh and Gurnam Singh had filed a civil suit bearing RT No.1259 of 15.06.2011 which was dismissed vide judgment and decree dated 13.02.2012. On an appeal preferred by the present plaintiffs, the case was remanded by the First Appellate Court vide judgment and decree dated 18.04.2013. The Trial Court once again vide judgment and decree dated 17.02.2014 dismissed the suit. It was further averred that the earlier litigation was also filed challenging the transfer deed bearing No.7378 and the present suit is also regarding the same dispute, although giving it a different colour. It was denied that the property was ancestral, joint Hindu family coparcenary property. It was further the case set up that Satnam Singh transferred his share in the suit property in favour of defendant-respondent No.1 by virtue of transfer deed dated 28.12.2005.

4. Separate written statement was filed by defendant-respondent No.8 raising various preliminary objections. The stand taken was that defendant-respondent No.8 and her sister defendant No.9 were also entitled to inherit 2/5th share out of the share of Satnam Singh.

5. Defendant-respondent No.5 appeared once and thereafter did not appear and was consequently, proceeded against *ex parte*. Defendant-respondent Nos.6, 7 and 9 did not appear despite publication and were proceeded against *ex parte*.

6. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are entitled to the relief of declaration, as prayed for ? OPP
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiffs is hit by the principles of *res judicata* as Amar Singh and Gurnam Singh had filed civil suit No.RT-1259 of 15.06.2011, which was dismissed vide judgment and decree dated 13.02.2012 passed by Shri Suresh Goyal, PCS, the then Civil Judge (Junior Division), Moga, if so its effect ? OPD
4. Whether the present suit has been filed with malafide intention and ulterior motive ? OPD
5. Whether the suit of the plaintiffs is not maintainable in the present form as the plaintiff has not approached the court with clean hands and has suppressed the material and true facts, if so its effect ? OPD
6. Whether the plaintiffs have no cause of action to file the present suit ? OPD
7. Whether the present suit is barred by limitation ? OPD
8. Relief.

7. The Trial Court vide judgment and decree dated 27.07.2018 dismissed the suit. Aggrieved by the same, an appeal was preferred which appeal was also dismissed vide judgment and decree dated 12.08.2024. Hence, the present regular second appeal.

8. Learned counsel for the plaintiff-appellants would contend that

the suit property is joint Hindu family property and that the earlier judgment and decree would not operate as *res judicata* inasmuch as the said judgment and decree was not passed in accordance with the law.

9. Heard.

10. In the present case, concurrent findings were returned by both the Courts regarding the suit being barred by the principles of *res judicata*. Satnam Singh, who died issueless, transferred his share in favour of defendant-respondent No.1 by virtue of transfer deed dated 28.12.2005. Learned counsel for the plaintiff-appellants has not been able to convince this Court that the suit was not barred by the principles of *res judicata*. The plaintiffs themselves were parties to the earlier suit as they had been impleaded as legal representatives of Amar Singh, which fact was admitted by plaintiff-appellant No.1 in his cross-examination while appearing as PW-1. Further still, both the Courts concurrently found that the suit property was not joint Hindu family coparcenary property. There is nothing on the record to even remotely suggest that the property was coparcenary joint Hindu family property in the hands of the plaintiff-appellants.

11. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.05.2025

jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO